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SERVICE DATE – FEBRUARY 15, 2002

## SURFACE TRANSPORTATION BOARD

### DECISION

STB Finance Docket No. 34132

#### NORFOLK SOUTHERN RAILWAY COMPANY–LEASE AND OPERATION EXEMPTION–THE BURLINGTON NORTHERN AND SANTA FE RAILWAY COMPANY

Decided: February 8, 2002

By petition filed on November 20, 2001, Norfolk Southern Railway Company (NSR) and The Burlington Northern and Santa Fe Railway Company (BNSF) jointly seek an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 11323-25 for NSR to lease and operate over approximately 1.2 miles of BNSF's line, known as the Norwood Hill Track, between mileposts BNSF 734.4 = NSR 800.6 ("Block One") and BNSF 735.6 = NSR 799.4 ("Block Two") at Birmingham, in Jefferson County, AL. We will grant the exemption, subject to standard labor protective conditions.

### BACKGROUND

NSR, a Delaware corporation, is a Class I rail carrier operating in 22 states, the District of Columbia, and the Province of Ontario, Canada. BNSF, a Delaware corporation, is also a Class I rail carrier operating in 28 states and in two Canadian provinces.

NSR currently operates two main lines in the same right-of-way as BNSF's Norwood Hill Track. There is only one BNSF customer located on the Norwood Hill Track, Warehouse Wood Products, and BNSF's dispatching of this segment interrupts NSR's more extensive operations. To create a more efficient operation in the area, NSR and BNSF entered into a lease agreement which would result in NSR controlling the dispatching and maintenance for all three tracks in the right-of-way.

Pursuant to the lease agreement, BNSF will lease the Norwood Hill Track to NSR for an indefinite period terminable by either party upon 30 days' written notice.<sup>1</sup> NSR will control dispatching on the Norwood Hill Track, operate over it, and maintain it in conjunction with its two main lines. The parties state that the lease will not have an adverse effect on shippers or have any other adverse competitive impact because, although NSR will use the Norwood Hill Track, BNSF is reserving the right to operate over it to serve Warehouse Wood Products, and any

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<sup>1</sup> Appropriate discontinuance authority will have to be obtained from the Board.

future customers, provided these operations will not unreasonably interfere with NSR's use of the track.

## DISCUSSION AND CONCLUSIONS

Under 49 U.S.C. 11323(a)(2), prior Board approval is required for a rail carrier to lease the property of another rail carrier. Under 49 U.S.C. 10502, however, we must exempt a transaction or service from regulation when we find that: (1) regulation is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101; and (2) either (a) the transaction or service is of limited scope, or (b) regulation is not needed to protect shippers from the abuse of market power.

Detailed scrutiny of the proposed transaction through an application for review and approval under 49 U.S.C. 11323-25 is not necessary to carry out the rail transportation policy of 49 U.S.C. 10101. By minimizing the administrative expense of the application process, an exemption will reduce regulatory barriers to entry and exit [49 U.S.C. 10101(7)]. An exemption will also foster sound economic conditions and encourage efficient management by permitting consolidation of operation and maintenance functions [49 U.S.C. 10101(5) and (9)]. In addition, an exemption will promote a safe and efficient rail transportation system and ensure coordination between rail carriers by placing dispatching and maintenance responsibilities with a single carrier [49 U.S.C. 10101(3)]. Other aspects of the rail transportation policy are not adversely affected.

Regulation of the proposed transaction is not necessary to protect shippers from the abuse of market power. BNSF will retain rights to continue to serve its existing shipper and any future shippers on the line. The transaction will result in changes in the dispatching and maintenance of the line, and these changes should result in more efficient operations in the area. However, to ensure that the shipper on the line is informed of our action, we will require BNSF to serve a copy of this decision on Warehouse Wood Products within 5 days of the service date of this decision and to certify to us that it has done so. Given our market power finding, we need not determine whether the proposed transaction is limited in scope.

Under 49 U.S.C. 10502(g), we may not use our exemption authority to relieve a carrier of its statutory obligation to protect the interests of employees. Accordingly, as a condition to granting this exemption, we will impose the standard employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

The proposed lease is exempt from both the environmental reporting requirements under 49 CFR 1105.6(c) and the historic reporting requirements under 49 CFR 1105.8(b).<sup>2</sup>

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<sup>2</sup> This transaction does not involve a significant change in carrier operations, BNSF has  
(continued...)

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. Under 49 U.S.C. 10502, we exempt from the prior approval requirements of 49 U.S.C. 11323-25 the lease by NSR of the above-described line, subject to the employee protective conditions in Mendocino Coast Ry., Inc.—Lease and Operate, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

2. Notice will be published in the Federal Register on February 15, 2002.

3. BNSF must serve a copy of this decision on Warehouse Wood Products within 5 days of the service date of this decision and certify to the Board that it has done so.

4. This decision will be effective on March 17, 2002. Petitions to stay must be filed by March 4, 2002. Petitions to reopen must be filed by March 12, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams  
Secretary

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<sup>2</sup>(...continued)  
no plans to dispose of or alter historic properties, and further Board approval would be required for BNSF to abandon any service.